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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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10/524,701

02/16/2005

Peter Emmanuel Petros

4150/005

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22440 7590 12/08/2008  
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EXAMINER

MASHACK, MARK F

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

12/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/524,701 | <b>Applicant(s)</b><br>PETROS, PETER EMMANUEL |  |
|                              | <b>Examiner</b><br>MARK MASHACK      | <b>Art Unit</b><br>3773                       |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This office action is in response to a communication dated 11/14/2008. Claims 17-33 are pending.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 17-26, 28** are rejected under 35 U.S.C. 102(b) as being anticipated by **Goble et al. (US 5,702,397)**.

**Goble et al.** disclose a tissue anchor intended to be implanted to repair or replace a ligament or other soft tissue in arthroscopic and open soft tissue surgical procedures (Column 1, Lines 6-9). The tissue anchor comprises a base and a head (FIG 21). The head comprises threads **122** that facilitate retention of the tissue anchor. The base comprises an aperture and is associated with a locking element **127** that allows sliding of a filament through a space but restricts it from sliding the opposite direction (FIG 21 and Column 11, Lines 33-60). The locking element comprises two

Art Unit: 3773

faces defining a convex arcuate edge (FIG 21). First Face (visible FIG 21-22) and Second Face (visible in FIG 22) are proximate to both directions of suture path. Serrations **129** extend from First Face to Second Face and inherently create slots between said serrations (Column 11, Lines 55-60 and FIG 21). The space defined by the edge of the locking mechanism has a part annular configuration (due to arcuate edge and rounded edges) substantially corresponding to the cross section of the filamentary element (since it allows for the filament to pass) and substantially centrally across the central longitudinal axis of the anchor (FIG 21-22). The locking member inclined with respect to the base when the suture is present (FIG 21).

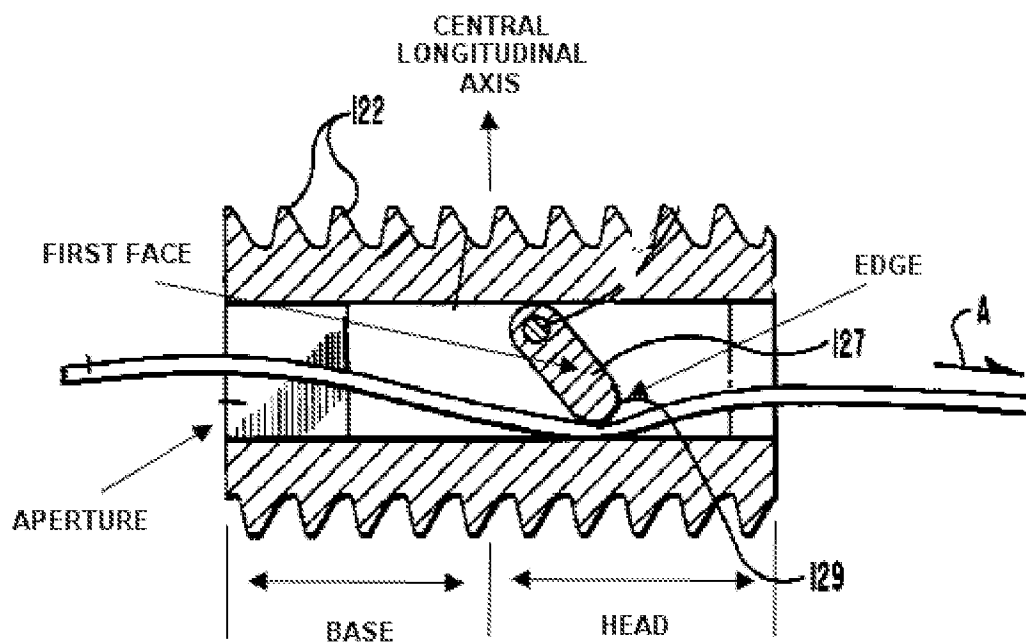
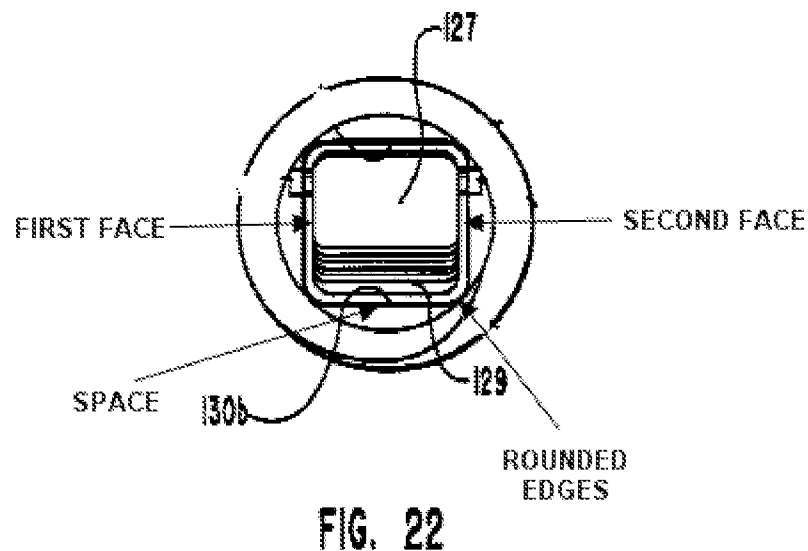


FIG. 21



3. **Claims 17-20 and 23-33** rejected under 35 U.S.C. 102(e) as being anticipated by **Colleran et al. (US 2003/0088250)**.

**Colleran et al.** disclose a tissue anchor comprising a base **230** and a head **215**, **216**, **219**. Head comprises a barbed configuration (FIGs 4) with prongs **219a'** comprising a tapered, pointed, resilient flexible tip (Paragraph 58). Said prongs 219a', b', c', d' are equidistant spacing around the central axis of the head (cross section 4E as shown in FIG 4D) and divergent away from the end of the head in the direction of the base (FIG 4A). The head comprises an aperture **235** associated with locking element, edge **254a**, which has a face **250a, b** on opposite sides of the edge **254a** which are

formed as recesses (or grooves) inwardly of the edge **254a** (Paragraph 59-61 and FIGs 4a-d). The space area between opposing edges and faces **250, 254** is part annular since it corresponds and complies with the cross section of the filamentary element when element is passed through (Paragraph 62) and substantially centrally across the central longitudinal axis (cross section 4E as shown in FIG 4D) of the anchor (Paragraph 62 and FIGs 4). The locking member **250, 254** is inclined with respect to the base when the suture is present and allows the filamentary element to pass in one direction and impedes it in the opposite direction (FIGs 4 and Paragraph 59-61).

### ***Response to Arguments***

4. Applicant's arguments filed 11/14/2008 have been fully considered but they are not persuasive. Applicant argues that the prior art does not disclose a tissue anchor capable of insertion into ligament tissue. If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK MASHACK whose telephone number is (571)270-3861. The examiner can normally be reached on Monday-Thursday 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Mashack/  
Examiner, Art Unit 3773

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773